

JOE B. CASHMAN

IBLA 79-344

Decided October 10, 1979

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mill site claims OR-MC 4171 Wash. and OR-MC 4172 Wash. abandoned.

Reversed.

1. Federal Land Policy and Management Act of 1976: Generally --
Federal Land Policy and Management Act of 1976: Assessment Work
-- Federal Land Policy and Management Act of 1976: Recordation of
Affidavit of Assessment Work or Notice of Intent to Hold Mining
Claim -- Federal Land Policy and Management Act of 1976:
Recordation of Mining Claims and Abandonment -- Mining Claims:
Recordation

Regulation 43 CFR 3833.1-2(d) states that a location notice for each mining claim, millsite, or tunnel site filed for recordation shall be accompanied by a service fee. As this is a mandatory requirement, there is no recordation unless the documents are accompanied by the stated fee, or until it is paid. Therefore, where a notice of location of a claim or site is submitted to BLM for recordation on Dec. 14, 1977, and the filing fee therefor is not paid to BLM until Feb. 10, 1978, the recordation date of the notice is Feb. 10, 1978.

APPEARANCES: Joe B. Cashman, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Joe B. Cashman appeals from the decision of the Oregon State Office, Bureau of Land Management (BLM), dated April 4, 1979, which declared the Apex Nos. 1 and 2 millsite claims null and void for failure to file, during calendar year 1978, any assessment statement (proof of labor) or notice of intention to hold the millsite as required by the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The record shows that on December 14, 1977, Cashman submitted to BLM copies of the recorded notices of the locations of Apex No. 1 and Apex No. 2 millsites, but that the required filing fee of \$5 per claim was not paid until February 10, 1978.

[1] 43 CFR 3833.1-2 requires that, for mining claims, millsites, or tunnel sites located prior to October 21, 1976, a copy of the location notice must be recorded with the proper office of BLM within 3 years, or before October 22, 1979. For such claims or sites located after October 21, 1976, the location notice must be recorded in the proper BLM office within 90 days following date of location. 43 CFR 3833.1-2(d) states that each claim or site filed with BLM shall be accompanied by a \$5 service fee. This is a mandatory requirement. Without payment of the filing fee, there is no recordation. Thus, as the filing fee for the notices of Apex No. 1 and Apex No. 2 millsites was not paid until February 10, 1978, it must be held that the date of recordation of these claims with BLM cannot be considered to have occurred earlier than that date.

It is noted that the Apex No. 1 and Apex No. 2 millsites were first located February 20, 1969, and amended location notices were recorded in King County, Washington, on November 28, 1977, and December 12, 1977, respectively. Within the 90 day period afforded by statute, these amended notices were submitted to BLM and the filing fees paid February 10, 1978. The amended notices, made only to conform the sites to their surveyed boundaries, are deemed to relate back to the original date of location.

43 CFR 3833.2-1(a)(2) provides that a notice of intention to hold each unpatented millsite must be filed with BLM prior to December 31 of the year following the calendar year of recording with BLM. Thus, the owner of a millsite claim located prior to October 21, 1976, and recorded with BLM in February 1978 would not have to have filed a notice of intention to hold that site until calendar year 1979. In the situation before us, we find it was error for BLM to hold the Apex No. 1 and Apex No. 2 millsite claims void.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

